

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By **CHAIRMAN REINY JABS**, on February 1, 1999 at
3:05 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Reiny Jabs, Chairman (R)
Sen. Walter McNutt, Vice Chairman (R)
Sen. Gerry Devlin (R)
Sen. Pete Ekegren (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Greg Jergeson (D)
Sen. Ken Mesaros (R)
Sen. Linda Nelson (D)

Members Excused: Sen. Tom A. Beck (R)
Sen. Jon Tester (D)

Members Absent: None.

Staff Present: Carol Masolo, Committee Secretary
Doug Sternberg, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 51, HB 30, HB 80, 1/27/1999
Executive Action: HB 51, HB 30, HB 80

HEARING ON HB 30

Sponsor: Representative Ray Peck, HD 91, Havre

Proponents: Jack Kane, Dept. of Commerce

Opponents: None

Opening Statement by Sponsor:

REP. RAY PECK, HD 91, This is a bill at the request of the Department of Commerce that repeals a section of law. Section 402 is a section that specifies the weights of bread, for example. It's an archaic bill and section of law. Section 403 is the same thing about butter, oleo margarine, and margarine. Section 404 concerns fluid dairy products and Section 405 deals corn meal, flour and hominy grits. They're all dated in terms of the way we do business now. Because these laws are on the books, people violate them every day.

Proponents' Testimony: Jack Kane, Bureau Chief, Weights and Measures, Department of Commerce, This is just a housecleaning bill. The Bureau has the authority in statute to adopt reasonable rules pertaining to the way commodities are sold, i.e. volume, weight, whatever. The Uniform Method Handbook 130 specifies that things should be sold by weight or by volume but does not specify exactly how. Prior to this bread had to be sold in 1 lb., 1/2 lb., 2 lb. loaves. When you've got caraway seeds with carrot cake, dates and nuts in it, you can't control that well, so if that loaf of bread says its one pound eight and a quarter ounces, as long as it's one pound eight and a quarter ounces we're happy. Same with fluid dairy products. Prior to this you couldn't have an 8 oz. or 4 oz. container of milk. This is a very popular size when you're talking about rest homes, hospitals and some schools. We've repealed statutes that will allow these to be packaged to the size which is driven by the market place and not regulatory agency.

Opponents' Testimony: None

Questions from Committee Members and Responses:

CHAIRMAN JABS These are controlled through rule making now?

Jack Kane In statute, the court has given the Dept. of Commerce authority to adopt reasonable rules pertaining to the sale of commodities. We have adopted the National Institute of Standards and Technology Handbook 130, Uniform Laws and Regulations, Methods of Sale of Commodities. This is developed with the National Conference of Weights and Measures. Sixty five percent of the members are from industry.

Heinz Ketchup can't very well pack bottles of ketchup for all different states of all variances. What they have asked is, allow us to pack what the market dictates. In other words, the

size the consumer wants and we will agree, within reasonable rules, to fill that container with a certain amount of product.

We have been in conflict with the laws. Thirty years ago regional rules applied. The City of Spokane wanted to keep out the competition so their loaves were not 1 pound, they were eight tenths, nine tenths, something like that. Ten years ago when I was an inspector, almost every store had a bakery in it where they actually mixed the ingredients and made bread. The majority of the bakeries now just heat up chunks of frozen dough that comes from the factory. They would like to see some form of uniform regulation across the United States.

Closing by Sponsor:

REP. PECK I'll note for the benefit of the committee I have a former student here, **SENATOR EKEGREN**.

EXECUTIVE ACTION ON HB 30

Motion/Vote: **SEN. HALLIGAN** moved that **HB 30 BE CONCURRED IN**.
Motion carried unanimously.

SENATOR EKEGREN to carry **HB 30** to the Senate.

{Tape : 1; Side : A; Approx. Time Counter : 3.12}

HEARING ON HB 80

Sponsor: **REPRESENTATIVE JOHN COBB, HD 50, AUGUSTA**

Proponents: **Bud Clinch, Department of Natural Resources**

Opponents: **None**

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, HB 80 is a request of the Dept. of Natural Resource and removes certain state laws that were declared invalid in a recent Montana District Court case that the Dept. of Natural Resources agreed were illegal. It will not be appealed to the Montana Supreme Court. Montanans for Responsible Use of School Trust sued the State of Montana and the Board of Land Commissioners and the Dept. of Natural Resources in District Court of Lewis & Clark County. The group sued over various legislative statutes which over the years allowed the use of state lands for various purposes as well as set the price in the use of those lands. Their main arguments were that the land was

held in trust, the state must act as trustee and be held in the same strict fiduciary conduct that applies to trustees in general, and that the state was providing favoritism to some of the beneficiaries. That is not permitted. Or the state was not charging fair market value land. In these arguments the court struck down main statutes.

The first page of the handout you have were the statutes that were struck down. **SEE EXHIBIT (ags25a01)**. We are appealing some of these statutes but these are all the ones the court struck down. Many of these have never been used before, some have just recently been passed by the legislature such as easement payments. On the bottom, the court did uphold several statutes. If you turn the page over, you'll see the statutes we're taking out, which is the bill in front of you.

I'll go over the ones being appealed quickly. The historic easements; this was Rep. Grinde's bill last session to allow the purchase of easements across state lands. That was a \$50 application fee and there was a value set on how they've supposed to be paid. The tenant law was to allow adjacent landowners legal access to their property through state lands. The court said we were not charging fair market value but we're appealing that. The court struck down giving free firewood, but we're challenging that. The Court said we did not determine what could be sold for profit before it was given away.

The main one we're appealing is the cabin site rentals. The law set rental at the greater of \$102 or 3.5% of the appraised value as determined by the Department of Revenue. There are about 800 cabins or home sites right now. The court said 3.5% wasn't fair market value because the Montanans for Responsible Use group said we ought to be getting 8% to 12%. The Dept. couldn't contradict those figures but we're appealing that.

The ones we are eliminating are cemeteries on public land, coal mining permits for private use and for schools, leasing privileges of permittee, selection of school sites, approval election, and lease of state lands, and restrictions on land available for sale. **REP. COBB** gave a brief history on each of these.

What this bill does is take out what the court and Dept. agreed are Unconstitutional. The ones we are appealing are not a part of this bill.

Proponents' Testimony: **Bud Clinch, Director of DNRC**, I'm not going to attempt to improve on **REP. COBB's** description of what this bill does. This bill is repealing or amending those

statutes that were decided to be Unconstitutional by the District Court. It's important you know that, for the most part, we hadn't implemented the provisions of those for a long period of time. The District Court's action and/or appeal of this really isn't going to have any affect on our management of state school trust lands. In fact, at the District Court level, most of these statutes that we're amending in here, we didn't even offer a defense because we were of the same persuasion that there was an Unconstitutional question of it.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SENATOR JERGESON Have you made an estimate of how much and who will bear the cost of the appeal to the State Supreme Court?

Bud Clinch We haven't made an estimate and who bears the cost. It will come out of the Dept.'s budget, our legal staff, that's part of our budgeted cost to present and argue that case. There will be costs incurred but they won't be additional to what is already budgeted.

REP. COBB The reply brief from the opponents came back today and we have a month to respond. The Supreme Court will either set up a hearing or just decide upon an oral hearing and we just have the results back in 4 to 6 months.

SENATOR JERGESON If we were to decide that historic easements were probably bad public policy and were to amend this bill so we don't defend that, would it give you heartburn?

REP. COBB I'm just carrying the bill. The Senate can do whatever they want.

CHAIRMAN JABS You can't give firewood away?

REP. COBB The laws says permits may be issued free of charge for dead, downed and inferior timber for fuel for domestic purposes for residents and settlers of the state. It's a pretty old law. The Dept. has, in fact, issued some permits in the past. The court said the statute does not distinguish between timber of no commercial value and timber that does have commercial value. The Court said the state failed to first determine if the wood could be sold for profit before it can be given away. The Dept. was trying to say if it's dead, down and inferior, it probably has no value.

CHAIRMAN JABS If there's some value, they can't give it away.

SENATOR DEVLIN What is it about the cabin sites?

Bud Clinch The litigation alleged that the rental rate that we're currently charging for cabin sites, 3.5% of the appraised land value, did not attain fair market value and they basically directed the Dept. to go back and implement fair market value. In fact, they referenced other studies in terms of giving us some direction. It was the Board of Land Commissioners decision that we needed to appeal to get some clarifying language relative to what the appropriate process and rate should be for establishing the rental rate for cabin sites.

SENATOR DEVLIN What do they think the rate should be?

Bud Clinch The plaintiffs alleged that the study this legislature directed two sessions ago that talked about 9 to 12% of the appraised value of the land was a comparable rental rate on private property. That was the evidence that was presented by the plaintiffs. We really didn't have counter argument to prevail at the District Court level so subsequently we got some direction from the District Court that has some serious ramifications as to what we do with our 800 plus cabin and home sites. We're trying to mount a defense to our current process at the Supreme Court.

CHAIRMAN JABS You're saying that 3.5% is okay in your mind, is that right?

Bud Clinch No, what we're really appealing is the rest of the decision. I'd like Tom Butler, our legal counsel to respond. We need to recognize that in this situation, the Land Board is the one who gave us the direction to appeal. I think the Dept. is fairly confident that the current rate of 3.5% probably doesn't meet anybody's standard of fair market value. We're not sure the higher rate of 9% to 12% is the appropriate amount either.

Tom Butler, Trust Lands Attorney for DNRC, One of the statutes that the Dept. of State Lands did appeal or send to the State Land Boards Commissioners for instruction was the cabin site rental statute. What District Judge Dorothy McCarter held was, in referring back to this earlier study, the appropriate range of rental rates is 8% to 12% and the current 3.5% rental rate doesn't comply with the Constitutional requirements for all dispositions of school trust land.

The Dept.'s appeal here is not directly related to whether or not 3.5% is fair market value. It's a very narrow, technical appeal. We're saying the only entity within our government that's authorized to exercise discretion and set the rate for that cabin

site is the State Board of Land Commissioners. That's their sole Constitutional duty and power. District Court can affirm a rate or strike down a rate, but it cannot set a rate. That's what we claim the Court illegally did here. They erred by saying this is the rate you ought to set. The Court can say it's unconstitutional, it's legal or it's not. The appropriate remedy would be to remand this case back to the State Board of Land Commissioners to determine the appropriate rate.

The second portion of this statute we appealed is when you're bringing a civil case. Generally there are pleadings and discovery and notices along the way before you get to trial, showing you exactly what the legal contentions are of each party. In this case the legal contentions of the public interest group who brought this case was that the lack of competitive bidding requirement in the cabin site statute rendered it unconstitutional. They were saying the only way that cabin site rental rates could be Constitutional were through open bidding. Our contention all along was focused very narrowly on when you needed competitive bidding or not. We made our legal arguments to the court saying no, the legislature, in it's discretion, can set up a process for determining fair market value, provided that it allows the Board Commissioners to set the actual rate. The legislature can set up the procedure, the Board of Land Commissioners can set the rate.

At no time did Montrust say they were challenging the 3.5% rate. It's very narrow grounds of appeal. We want to respect the authority of the board and yet we don't want the District Court to overstep it's bounds either.

{Tape : 1; Side : A; Approx. Time Counter : 3:29}

Closing by Sponsor:

REP. COBB It's my understanding **SENATOR BECK** will carry this bill if it passes this committee. Cabin rental sites are not part of this bill, but you'll hear about that in a few months.

HEARING ON HB 51

Sponsor: REPRESENTATIVE HAL HARPER, HD 52, HELENA

Proponents: Bud Clinch, Director, DNRC

Opponents: None

Opening Statement by Sponsor:

REP. HAL HARPER, HD 52, HB 51 changes a couple of dates for the Drought Advisory Council Committee. This committee was formed some years ago to respond to the needs of water users of everyone who depended on the weather, from ski hills operators to farmers and ranchers. They want to move the spring date a month closer to the water use season, and move by one month the date for submittal of the drought report to the Governor. These recommendations come out of committee and I think it will help them.

Proponents' Testimony: **Bud Clinch, Director, DNRC,** This just changes the dates to allow the committee to more accurately make their prediction based on more current information that's available because of the changes that have taken place with telemetry and various technologies that report moisture levels and stream flows. Changing these dates will allow the analysis of data with more complete information and a more appropriate time frame for the submittal of the report to the Governor.

Opponents' Testimony: None

{Tape : 1; Side : A; Approx. Time Counter : 3.32}

Questions from Committee Members and Responses:

SENATOR HALLIGAN Isn't there any rule making authority out there where we don't have to put in statute either one of these dates. The advisory committee can set it's own time instead of having to set it in statute.

REP. HARPER We could eliminate a lot of bills if we could make these changes but the problem is we specify in the original language and unless we go through to wipe them out we have to do it every time we change the bill. It seems like there ought to be a system where we could clean up all these things in one bill for one department but we haven't come up with it yet.

Closing by Sponsor:

REP. HARPER I have no one to carry this bill, so I would appreciate the committee's help and their indulgence if they see fit to carry it.

SENATOR NELSON will carry it.

EXECUTIVE ACTION ON HB 51

Motion/Vote: SEN. MESAROS moved that HB 51 BE CONCURRED IN.
Motion carried unanimously.

SENATOR NELSON to carry.

EXECUTIVE ACTION ON HB 80

Motion/Vote: SEN. DEVLIN moved that HB 80 BE CONCURRED IN.
Motion carried unanimously.

SENATOR BECK to carry.

ADJOURNMENT

Adjournment: 3:40 P.M.

SEN. REINY JABS, Chairman

CAROL MASOLO, Secretary

RJ/CM

EXHIBIT (ags25aad)